

THELMA S. BUTCHER

IBLA 71-147

Decided August 3, 1972

(FBC F-026764) Alaska State Office, Bureau of Land Management rejecting application to purchase and cancelling trade and manufacturing site claim.

Affirmed.

Alaska: Trade and Manufacturing Sites

Trade and manufacturing site purchase application is properly rejected where the appellant shows only preliminary preparation and no actual business use of the site.

APPEARANCES: Thelma S. Butcher, pro se.

OPINION BY MR. STUEBING

Thelma S. Butcher, successor to her deceased husband, the original party, appealed to the Secretary of the Interior from a decision of the Alaska State Office, Bureau of Land Management, dated November 3, 1970, rejecting her application to purchase approximately 80 acres as a trade and manufacturing site and cancelling her claim.

The application was made pursuant to Section 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970), which provides that:

Any citizen \* \* \* in the possession of and occupying public land in \* \* \* Alaska in good faith for the purposes of trade, manufacture or other industry may each purchase one claim \* \* \* upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture or other productive industry \* \* \*.

Section 5 of the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970) requires claimants to file notice of occupancy within 90 days from the initiation of the claim in order to be given credit for the occupancy maintained in the claim prior to the filing of the notice or an application to purchase, whichever is earlier. It then provides:

Application to purchase claim, along with the required proof of showing, must be filed within five years of the filing of the notice of the claim under this section.

Earl L. Butcher filed this location notice on September 27, 1960, and an application to purchase February 11, 1966. Appellant contends that the delay in filing the application to purchase was caused, in part, by the illness and subsequent death of her husband and in part by the erratic mail service in her remote area. 43 CFR § 1871.1-1 (1972) allows for equitable adjudication in cases of good faith where there is substantial compliance with the requirements of the law. C. Rick Houston, 5 IBLA 71 (1972). However, even though a question of equitable consideration may be raised by the facts relating to the time of filing in this case, it is not necessary to consider that remedy in light of our other findings regarding the extent of her compliance with other mandatory requirements.

In her application to purchase the site Mrs. Butcher listed as improvements a small cabin, excavation and drainage work with an estimated total value of \$5,500. The land examiner's report showed no building on the land. Mrs. Butcher explained this by stating that "a building was moved upon the land, but was temporarily moved out of the way while land drainage and fill work was done, but because of the subsequent health reasons was not replaced to its first location." Mrs. Butcher also stated that the land was to be used for a trailer park and airstrip. Grading and drainage work was carried out pursuant to fulfilling these goals. No evidence was submitted that the land in question was ever actually used for any of the proposed purposes. Even if we assume that all the appellants contentions are true, the mere preparation of land for conducting a business is not sufficient to satisfy the requirements of the law. James E. Allen, A-30085 (February 23, 1965); Kenai Power Corporation, 2 IBLA 56 (1971).

The burden is on the appellant to show an actual business being carried on. If there is no evidence of a business for one of the purposes stated in the Act, supra, the application must be denied regardless of the reasons for lack of an actual commercial enterprise. Harvey Redmond, A-31043 (November 4, 1969).

Appellant points out her special difficulties and the general problems inherent in preparing land in her area of Alaska. We appreciate her problems, however she has completely failed to show

any improvement other than preliminary preparation of the site for her proposed uses and absolutely no business use of the land. The regulation clearly requires that the site be actually used and occupied for a business. This showing has not been made. James E. Allen, supra; J. Frederick Cornell, 4 IBLA 11 (1971).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Edward W. Stuebing  
Member

We concur:

Martin Ritvo  
Member

Douglas E. Henriques  
Member

